

## REMARKS

### Summary

Claims 9-28 were pending and all of the claims were rejected in the present Office action. Claim 9 has been amended. No new matter has been added. The Applicants have carefully considered the references and the arguments presented by the Examiner and respectfully traverse the rejections on the basis that a *prima facie* case of anticipation or obviousness has not been made out. The Applicants respectfully maintain the traverse made in the response to the Office action of August 22, 2007. The present paper is a traverse of the Response to Arguments of the present Office action.

### Claim Rejections

#### **35 U.S.C. § 102(b)**

Claims 9-13, 15-16, 21-23 and 26 were rejected under 35 U.S.C. § 102(b) as being anticipated by Siczek et al. (US 5,014,292; "Siczek").

The Examiner does not accept the Applicants' submission that Siczek does not teach or suggest a CT device. The Office action maintains that "the Siczek et al. reference suggests a CT device because the device comprises a single axis rotation means and means for acquiring x-ray images." (Office action, page 5). Siczek teaches that the "C-shaped carriage assembly 3...is rotatable mounted about an axis parallel to the x axis on an elongated support member 8...and around a longitudinal axis of elongated support member 8." (Siczek, col. 3, lines 19-29). There are thus two axes of rotation. This point is merely made for clarification.

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim*." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir 1984) (citing *Connell v. Sears Roebuck & Co.* 722 F.2d 1542 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

The Office action asserts that the device described by Siczek is a CT device. However, the device is not described as such in the reference, nor is there any discussion of the method of data acquisition or data processing which would lead a person of skill in the art to conclude that the reference was describing a CT device. The Examiner's argument could only be understood as asserting that the function of a CT device was inherent in the device taught by Siczek.

"To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such a gap in the reference may be filled with recourse to extrinsic evidence. *Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference*, and that it would be so recognized by persons of ordinary skill." (emphasis added) *Continental Can Co. USA Inc. v. Monsanto Co.*, 948 F.2d 1264, 20 USPQ2d 1746 (Fed. Cir. 1991).

The Examiner will be well aware of various x-ray devices as are known in the art which are not capable of being used as a CT device. As such, without being specifically mentioned as a characteristic of the device described by Siczek, there is no justification for an assertion that Siczek has described a CT device. Therefore not all of the elements and limitations of Claim 9 are found in Siczek, and the claim is allowable.

Independent Claims 22 and 28 recite the computer tomography device, and are allowable for at least the same reason. Claims 10-21, and 23-27 are claims dependent on an allowable claim, and are allowable as such.

### **35 U.S.C. § 103(a)**

Claims 14 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Siczek. As argued above, Siczek does not teach or suggest a computed tomography device, and therefore does not teach all of the elements of Claims 14 and 19, which are also allowable as dependent claims.

Claims 17-20, 24-25 and 27 were rejected under 35 U.S.C. § 103(a) Siczek, in view of Seufert (US PG Pub. 2002/0112288; "Seufert").

Claim 17 is dependent on allowable Claim 9, and is allowable without more.

The Office action (page 5) asserts that (in Seufert) "[w]hile the support is mounted to the floor it is also mounted to element 18 (figure 1) which is connected to

and adjacent to the imaging device.” The term “adjacent” is not mentioned in Claim 17. Element 18, as taught by Seufert is the flat upper surface of an endless band 17 (Id, [0029] and [003]). If the band 17 was connected to the imaging device, then the belt would not be capable of motion about the drive rollers 13 and 25, and the device would not be operative for its intended purpose. An inoperative reference cannot be used in a combination to make out a case of obviousness. Therefore, Seufert cannot be used in combination with Siczek to make a *prima facie* case of obviousness, and Claim 17 is independently allowable.

Claims 9-12, 22-23 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gore (GB 2,386,887; “Gore”).

The Office action (page 6) asserts that the term “lateral” depends on the point from which the apparatus is viewed. However, the terminology use must be consistent throughout the argument. The Examiner argues that the situation is different from the Applicant’s argument when the apparatus of Gore is viewed from the side perspective. The word “lateral” means “of or relating to the side” or “situated on, directed towards, or coming from the side” ( Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition). The Applicants respectfully submit that, when viewed from the side perspective, an appropriate description of the relationship of the axis 5 to the axis of the MRI device 1 is that the axis 5 is displaced vertically from the axis of the MRI device 1. However, the Applicants have amended Claim 1 to clarify the description of the mounting, and respectfully submit that this amendment clearly distinguishes the present invention from the cited reference.

Claim 22 is allowable for a similar reason. Claim 26 is allowable as a claim dependent on Claim 22. Claims 11-12 are allowable as claims dependent on allowable Claim 9.

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**Conclusion**

Claims 9-28 are pending.

For at least the reasons set forth above, the Applicants respectfully submit that the pending claims are allowable and look forward to the early issuance of a Notice of Allowance.

The Examiner is respectfully requested to contact the undersigned in the event that a telephone interview would expedite consideration of the application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Sid Bennett', is written over a horizontal line. The signature is stylized with a large initial 'S' and a trailing flourish.

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